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No. .....

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1987

—o—

ANN P. FIELDS, GERALD FIELDS and
LIFE FOR GOD'S STRAY ANIMALS, INC.,
Petitioners,

v.

GAYLE ALLEN, *et al.*,
Respondents.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

—o—

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56 pp

QUESTION PRESENTED

Whether the decision by the Supreme Court of Georgia, affirming the judgment of the trial court which disallowed Petitioners from presenting evidence, or cross-examining Respondents' witnesses, at trial, as punishment for Petitioners' civil contempt in another case, constituted a deprivation of Petitioners' rights under the Constitution of the United States, in conflict with the decision of the Supreme Court of the United States in *Hovey v. Elliott*, 167 U.S. 409 (1897), where the Supreme Court of the United States held that the striking of a party's answer and entry of default (as was done by the trial court in the present case) as *punishment* for a civil contempt, deprived the party of due process of law and the constitutional right to the party's day in court, under the Constitution of the United States; and in conflict with the Supreme Court's decision in *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983 (1972), wherein the Court ruled that property owners were entitled to a hearing before their property was seized, even if they had no valid defenses.

In the case before the Court, neither Petitioner Life for God's Stray Animals, Inc., the owner of the property in question, nor Petitioners Ann and Jerry Fields, were allowed to participate in the trial which ultimately resulted in a "no-kill" animal shelter being declared a nuisance, and in Petitioners being directed to "close down" the shelter.

PARTIES

The Petitioners herein are Ann P. Fields, Gerald Fields, operators of a no-kill animal shelter Life for God's Stray Animals, Inc., a charitable, non-profit corporation, and owner of the shelter property located in Rockdale County, Georgia.

The Respondents herein are Gayle Allen, Bobby Allen, George William Stephens, Robin Bennett, John Bennett, Steve Wittenmyre, Sandy Wittenmyre, Joe Wilkins, E. F. Forrester, Ruby Forrester, Charles B. Rotenburg, Bob Trivitt, Debbie Trivitt, Frank C. Snipes, Eulalie Leverette, David Little, Brenda Little, Keith Thomas, Kenny Thomas, Josephine Watson, T. R. Chastain, Betty J. Chastain, W. S. Connor, Marvin Dow, Linda Dow, Jessie Fortner, Della Fortner, Lucille Lamar, Tommy Wilkerson, Judy Wilkerson, John Walton Henderson, Sr., Harold Machen, Alton C. Henderson, Individually and as The Walton-Newton-Rockdale County Homeowners Association, and Rockdale County, Georgia.

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No. .....

In The
Supreme Court of the United States
October Term, 1987

ANN P. FIELDS, GERALD FIELDS and
LIFE FOR GOD'S STRAY ANIMALS, INC.,
Petitioners,

v.

GAYLE ALLEN, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

The Petitioners herein respectfully pray that a Writ of Certiorari issue to review the Judgment of the Supreme Court of Georgia entered on September 9, 1987 and rehearing denied on September 24, 1987.

OPINIONS BELOW

Appendix, Part VI, Order by trial court of March 11, 1987.

Appendix, Part VII, decision by Supreme Court of Georgia affirming the trial court Judgment without opinion on September 9, 1987.

Appendix, Part VIII, decision by Supreme Court of Georgia dated September 24, 1987, denying Petitioners' Motion for Rehearing without opinion.

JURISDICTION

The Judgment of the Supreme Court of Georgia was entered on September 9, 1987. (App. 26). Petitioners/Appellants' Motion for Rehearing was denied on September, 24, 1987. (App. 27). This Petition for Writ of Certiorari is filed within ninety (90) days of the Order of the Supreme Court of Georgia denying rehearing. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1257(3).

STATEMENT OF THE CASE AND PERTINENT FACTS

This case originates in the Superior Court of Rockdale County, Georgia (hereinafter referred to as the "trial court") where Respondents filed a Civil Complaint against Petitioners, claiming that the operation of Life for God's Stray Animals, Inc.'s (LFGSA) "no-kill" animal shelter constituted a nuisance. (App. 21).

Under the guise of a sanction for Petitioners Ann P. Fields and Gerald Fields not appearing to give their oral

depositions, (see copies of Notices of Deposition, Appendix Parts XIII and XIV attached hereto) the trial court struck all Petitioners' defensive pleadings including the Answer of Petitioner LFGSA, although the oral deposition notices were not even addressed to LFGSA, without a prior evidentiary hearing, and proceeded with a bench trial wherein only Respondents presented evidence of their nuisance claims. (App. 11). Petitioners, however, were not permitted by the trial court to participate in the bench trial, either by cross-examination of Respondents' witnesses, or through presentation of evidence by Petitioners. (App. 11 to 18). In truth and in fact, the trial court struck Petitioners' pleadings and held Petitioners to be in default, as mere punishment for Petitioners' civil contempt, before the same trial court, in a different case which related to the operation by Petitioners of an animal shelter at a different location. (*See* Appendix Part XII attached hereto). Petitioners Ann P. Fields and Gerald Fields had left the State of Georgia when confronted with an *indefinite* jail sentence by reason of their civil contempt in the other case; the indefinite jail sentence had been entered by reason of Petitioners' failure to move animals from the other shelter location in accordance with the schedule of the trial court. The Georgia Supreme Court dismissed the appeal of Ann P. Fields and Gerald Fields in the other case, from the said indefinite jail sentence, by reason of Petitioners' flight from the State. (*See* copy of Georgia Supreme Court decision in the aforesaid case, attached hereto marked Appendix Part XII). The punishment of Petitioners in this case by the trial court, by reason of the civil contempt in the other case, was evidenced by a number of statements made by the trial court, and other pertinent events and circumstances including the following:

(a) On February 16, 1987 the trial court entered an Order denying Petitioners' Motion to Change Venue and Demand for Jury Trial, and granted Respondents' Motion to Strike All of Petitioners' Pleadings and for Entry of Default Judgment, although the oral deposition notices were not even addressed to Petitioner LFGSA who was the owner of the property in question. (App. 2). Included in the February 16 Order were the following statements by the trial court:

> "The defendants' . . . are fugitives on a civil contempt in another case . . ." (App. 2).

(b) On February 26, 1987, without holding a prior evidentiary hearing as to the issue of wilfulness, as required by the applicable Georgia law, the trial court entered an Order striking the pleadings of all Petitioners, including LFGSA (App. 11), although the Respondents' Notices of Deposition were not even addressed to LFGSA. (App. 32 and 34).

(c) In anticipation of the bench trial, Petitioners filed with the trial court, on March 6, 1987, a Renewed and Amended Motion to Recuse and to Change Venue, Motion to Set Aside Default and for Continuance on Constitutional Grounds (App. 4) and Motion to Allow Defendants to Cross-Examine and Present Evidence. (App. 7), (hereinafter referred to as the "pretrial motions"). At the commencement of the bench trial on March 9, 1987 the trial court announced that it would hear evidence from the Respondents to "substantiate their position" (App. 11), but would not

hear any testimony from Petitioners, nor allow Petitioners to participate in the trial by examination of witnesses or taking any active status. (App. 11). The trial court announced, also, that the pretrial motions filed by Petitioners would be denied. (App. 12).

(d) In connection with Petitioners' Motion to Set Aside Default, wherein Petitioners Ann and Gerald Fields offered to give their depositions through interrogatories, by long distance telephone, or other alternative means, (App. 4 and 13), the trial court stated the following:

> "This court is not going to take (allow) any alternative measures (of discovery) to protect the position of the *Fieldses who are fugitives* of the court and for this court to do this to protect their interests is beyond the stretch of imagination."[1] (App. 14). (emphasis added).

(e) Petitioners' attorney argued, unsuccessfully, at the March 9, 1987 bench trial, that Petitioners' status as to contempt charges in another case should not prejudice their right to participate in their own trial in the present case. (App. 15).

(f) With respect to the Motion to Allow Petitioners to Cross-Examine and Present Evidence, which contained a written offer of proof as to various items of pertinent evidence (App. 7), the trial court did not permit Petitioners to make such an offer of proof at trial, as to what evidence Petitioners could bring out by cross-examination or by affirmative presentation

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[1]The trial court ignored the separate interest of LFGSA, the owner of the property, although Respondents' Notices to Take Depositions were not even addressed to LFGSA.

of evidence; Petitioners' request to make an offer of proof was made and denied by the trial court.[2] (App. 15).

(g) On March 9, 1987, in an order regarding a discovery motion, the trial court reiterated the following statement regarding Ann and Gerald Fields' so-called "fugitive" status:

> "The defendants maintain their fugitive status." (App. 19).

(h) On March 11, 1987 the trial court entered an Order including the following findings and conclusions, again, referring to the so-called "fugitive" status of Petitioners Ann P. Fields and Gerald Fields:

> "The court further finds that the defendants Ann P. Fields and Gerald Fields are fugitives from this state . . ." (App. 22).

Following the bench trial and presentation of evidence only by Respondents, the trial court entered an Order holding that the maintenance of Petitioners' animal shelter constituted a nuisance, and Petitioners were ordered to close and cease operating the animal shelter, and to remove all animals from the property within thirty (30) days. (App. 25). Upon appeal by Petitioners, the Supreme Court of Georgia affirmed the Judgment of the trial court without opinion. (App. 26). Petitioners' motion for rehearing in

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[2]Prior to commencement of the March 9, 1987 bench trial, the trial court permitted Petitioners' attorney to object to the trial proceeding without participation by Petitioners, upon legal and constitutional grounds, including due process of law. (App. 15).

the Supreme Court of Georgia was denied on September 24, 1987. (App. 27).

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SUMMARY OF ARGUMENT

Under the guise of a discovery sanction, the trial court barred Petitioners (including the charitable corporation which owns the property) from participating in a trial in Rockdale County, Georgia, wherein the trial court declared a "no-kill" animal shelter located next to a garbage dump a "nuisance" and stripped Petitioners of their property rights without due process of law, as *punishment* for a civil contempt of Petitioners in another case. The Supreme Court of Georgia affirmed the decision of the trial court without a written opinion.

The actions of the Georgia courts were contrary to the basic due process standards set out by this Court ninety (90) years ago in *Hovey v. Elliott,* 167 U.S. 409 (1897); and recently reiterated in cases such as *Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983 (1972).

The Georgia trial court even denied a defense and participation in the trial to the corporate Petitioner Life for God's Stray Animals, Inc., who owns the property at issue and who was not properly subject to any discovery sanction.

Georgia courts have routinely denied these Petitioners a defense on the issue of nuisance for their shelter. Petitioners have no other recourse to appeal a fundamental due process right of taking property without a hearing or defense allowed.

REASONS FOR GRANTING THE WRIT

THE DECISIONS OF THE TRIAL COURT AND THE SUPREME COURT OF GEORGIA HAVE VIOLATED PETITIONERS' RIGHTS TO DUE PROCESS AND THE RIGHT TO THEIR "DAY IN COURT" UNDER THE CONSTITUTION OF THE UNITED STATES

A. The Punishment Of Petitioners By Reason Of Their Civil Contempt In Another Case Violated Petitioners' Constitutional Rights.

The Supreme Court of the United States has held that the striking of a party's answer and entry of default, as punishment for a civil contempt, deprived the party of due process and the constitutional right to the party's "day in court." *Hovey v. Elliott,* 167 U.S. 409 (1897). The Supreme Court has extended the *Hovey v. Elliott* rule to apply to the dismissal of an appeal:

> "The appeal here was but a continuation of petitioner's defense which began in the trial court. But petitioner was denied any opportunity to defend itself in the Appellate Court because it had disobeyed a court order. By whatever other name it may be called, the dismissal was punishment . . . (citing *Hovey v. Elliott, supra*) . . . the purpose was punishment for an offense having no relation at all to the merits of the plaintiff's claim or to the petitioner's defense. *From the beginning, due process and equal protection have meant that every defendant must be permitted to defend himself in any court where his antagonist can appear and prosecute. This right of defense belongs to all-good or bad, one who has violated laws the same as one who has not . . .*" *National Union of Marine Cooks and*

Stewards v. Arnold, 348 U.S. 37, 46-47 (Justices Black and Douglas dissenting opinion). (Emphasis added).[3]

The applicable Georgia law conferred similar constitutional rights upon Petitioners by providing that where a party is in contempt of court in one case, this does not preclude the participation by that party in legal proceedings in another case, or in other proceedings in the same case. *Coker v. Norman,* 162 Ga. 351, 133 S.E. 740 (1926) (where a party was in contempt for interference with property in a receivership proceeding, same party was not precluded from filing pleadings and participating in the case); *Cason v. Cason,* 15 Ga. 405 (1854) (where a husband was in contempt for failure to pay temporary alimony, court was not authorized to deny the husband right to participate at trial, deemed "another proceeding").

Petitioners show that the above-referenced repeated statements and comments made by the trial court regarding the "fugitive" status of Ann and Gerald Fields and their "civil contempt in another case," indicate clearly that the Fields' contempt status in the other case was the reason for the trial court striking the pleadings of *all* Petitioners in the present case, disallowing alternative means of discovery suggested by Ann and Gerald Fields, and finally, not permitting Petitioners to cross-examine witnesses or to present evidence on their behalf at the trial. (App. 2, 14, and 22). The sentiment of the trial court, in this regard, was best revealed in the statement made by the trial court during the March 9, 1987 hearing:

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[3]Cf. *Hammond Parking Co. v. Arkansas,* 212 U.S. 322, 29 S.Ct. 370, 53 L.Ed. 530, where the pleadings of a party were struck not as a "punishment" for a separate contempt.

> "This court is not going to make (allow) any alternative measures (of discovery) to protect the position of the Fieldses who are fugitives of the court and for this court to do this to protect their interests is beyond the stretch of imagination." (App. 14).

The punishment of Petitioners, by disallowing their participation in their own trial, in the present case, by reason of a civil contempt in another case, violated their constitutional rights to due process of law (U.S. Const. Amend. V and XIV; Ga. Const. Art. 1, § 1, ¶ 1) (App. 28), as well as Petitioners' rights to equal, impartial and complete protection to their person and property (U.S. Const. Amend. XIV; Ga. Const. Art. 1, § 1, ¶ 2) (App. 28).

This Court recognized in *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972), the fundamental due process right to a hearing before an owner can be deprived of property, even if the owner had no valid defenses.

In *Fuentes*, and in this case, the state law provided a hearing procedure which was ignored. (See Georgia law described in section B, *infra*).

In the case before the Court, Petitioner LFGSA was not allowed a hearing before being deprived of its property rights in the shelter property through the: "close-down" Order of the trial court. The due process deprivation to the shelter, Life for God's Stray Animals, Inc., was a particularly gross miscarriage of justice as LFGSA never a party to the deposition notices of Respondents. (App. 32 and 34).

All of the contempt proceedings involved other homeowners and another property site for the shelter. Yet, on

the basis of this other action involving other parties, the trial court ruled that none of the Petitioners would be allowed to defend themselves while the court made a determination of nuisance, based upon the one-sided testimony of Respondents.

Such a breach of fundamental legal standards demonstrates the strong commitment of Respondents and others to run Petitioners' shelter out of Rockdale county—even at a site next to a garbage dump—without regard of the principles of due process.

B. Disallowing Petitioners' Day In Court Violated Their Rights Under Georgia Law.

In addition to the normal "due process" provision (App. 28), the Georgia Constitution provides for the "right of access to the courts," as follows:

> "No person shall be deprived of the right to prosecute or defend either in person or by an attorney that person's own cause in any of the courts of this state." (Ga. Const. Art. 1, § 1, ¶ 12). (App. 28).

The foregoing right, described by the courts as the "right of access to the courts," has been interpreted by the Georgia Courts to require that every party, in a civil case, have the opportunity to be heard and to present his/her claim or defense, namely to have his/her "day in court."

In the recent case of *Hart v. Owens-Illinois, Inc.*, 165 Ga. App. 681, 302 S.E.2d 701 (1983), the Georgia Court of Appeals held that the Georgia Constitution guaranteed, to all persons, due process and

> ". . . unfettered access to the courts of this state . . . these fundamental constitutional rights require that

> every party to a lawsuit be afforded the opportunity to be heard and to present his claim or defense, *i.e.* to have his day in court . . . these rights also require that every party have the opportunity to conduct a thorough and sifting cross-examination of all witnesses against him especially where the witness is the opposite party to the cause on trial and is testifying for the purpose of making out his case." *Hart v. Owens-Illinois, Inc.*, 165 Ga. App. 681, 302 S.E.2d 701 (1983).

In this connection, the applicable statute in Georgia, namely, *O.C.G.A.* § 24-9-64, relating to the right of cross-examination in a civil case provides as follows:

> "The right of a thorough and shifting cross-examination shall belong to every party as to the witnesses called against him." *O.C.G.A.* § 24-9-64.

Petitioners show that under the applicable state law, the trial court was required to hold an *evidentiary* hearing as to the issue of wilfulness, and to consider alternative measures of discovery and more reasonable sanctions, before imposing the ultimate harsh sanction of striking Petitioners' pleadings and entering a default. *E.g., Smith v. Mullinax,* 122 Ga. App. 833, 178 S.E.2d 909, 911 (1970) (trial court abused its discretion in entering default as discovery sanction without considering "less harsh" measures); *Cook v. Lassiter,* 159 Ga. App. 24, 282 S.E.2d 680 (1981) (trial judge's order striking defendant's pleadings and entering a default against defendant was set aside in view of lack of sufficient evidence of wilfulness on the part of defendant); *Harwood v. Great American Mortgage,* 164 Ga. App. 703, 298 S.E.2d 263 (1982) (evidentiary hearing must be held as to issue of wilfulness); *Serwitz v. GECC,* 174 Ga. App. 747, 331 S.E.2d 95 (1985) (trial court order

striking defendant's pleadings and entering a default was reversed without a proper hearing allowing defendant an opportunity to explain his failure or inability to comply). Petitioners show that there was no "evidentiary" hearing as to "wilfulness" in this case, and the trial court expressly refused to consider the possibility of alternative means of discovery which might result in "protecting the interests" of Petitioners. (App. 14).

Petitioners submit that by diregarding established state law, including, in particular, the aforesaid right of "access to the courts," the trial court and the Supreme Court of Georgia violated Petitioners' rights to due process and equal protection of the laws under the Constitution of the United States. *See Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983 (1972).

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CONCLUSION

Petitioners respectfully pray that this Honorable Court reverse the judgments of the trial court and the Supreme Court of Georgia, as contrary to the Supreme Court decision in *Hovey v. Elliott,* 167 U.S. 409 (1897), *Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983 (1972), and other applicable court decisions relating to Petitioners' constitutional right to their "day in court," and the right of Petitioner LPGSA not to be deprived of its property without due process of law.

This 18th day of December, 1987.

Respectfully submitted,

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APPENDIX, PART I

IN THE SUPERIOR COURT OF ROCKDALE COUNTY

STATE OF GEORGIA

GAYLE ALLEN, BOBBY ALLEN, GEORGE WILLIAM STEPHENS, ROBIN BENNETT, JOHN BENNETT, STEVE WITTENMYER, SANDY WITTENMYRE, JOE WILKINS, E. F. FORRESTER, RUBY FORRESTER, CHARLES B. ROTENBERG, BOB TRIVITT, DEBBIE TRIVITT, FRANK C. SNIPES, EULALIE LEVERETTE, DAVID LITTLE, BRENDA LITTLE, KEITH THOMAS, KENNY THOMAS, JOSEPHINE WATSON, T. R. CHASTAIN, BETTY J. CHASTAIN, W. S. CONNER, MARVIN DOW, LINDA DOW, JESSIE FORTNER, DELLA FORTNER, LUCILLE LAMAR, TOMMY WILKERSON, JUDY WILKERSON, JOHN WALTON HENDERSON, SR., HAROLD MACHEN, ALTON C. HENDERSON, INDIVIDUALLY and as THE WALTON-NEWTON-ROCKDALE COUNTY HOMEOWNERS ASSOCIATION, Plaintiffs, v. ANNE P. FIELDS, GERALD FIELDS, LIFE FOR GOD'S STRAY ANIMALS, INC., ROCKDALE COUNTY, GEORGIA, Defendants.	CIVIL ACTION FILE NO. 86-CV-1934 (Filed February 16, 1987)

ORDER

The Plaintiffs in the above styled matter having filed a Motion to Strike Defendants' Pleadings and for Entry of Default Judgment and For Attorneys' Fees, and the Defendants having * * * and entering default judgment. All that is required is a motion, notice and hearing, such as has occurred in the instant case. See *Cook v. Lassiter*, 159 Ga. App. 24 (1981); *Kruger v. Kruger*, 146 Ga. App. 461 (1978); *Interstate Fire Ins. Co. v. Mayer*, 147 Ga. App. 751 (1978).

The Defendants wilfully failed to attend their own deposition. While times and places of deposition are often changed on request, here there is no good faith effort to change the time. Instead, there is an attempt to delay, without any effort by Defendants to schedule the deposition anew on a date certain. The failure to attend the deposition was a wilfull, conscious, intentional failure to appear by the Defendants, who are fugitives on a civil contempt in another case. The Plaintiffs' Motion to Strike Defendants' Pleadings and for Entry of Default Judgment and for Attorneys' Fees is therefore granted in part as set forth below.

IT IS ORDERED that:

1. Counsel for Defendants', Abe Sharony, withdrawal of Defendants' Motion to Dismiss Gerald Fields be reflected on the record;

2. The Defendants' Motion to Change Venue and Demand for Jury Trial is denied; and

3. The Plaintiffs' Motion to Strike Defendants' Pleadings and for Entry of Default Judgment and for

Attorneys' Fees is granted in part as follows. Upon the failure of Anne P. Fields or Gerald Fields, in their individual and corporate capacities,

* * *

APPENDIX, PART II

IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA

GAYLE ALLEN, et al.,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO.
	)	86-CV-1934
ANN P. FIELDS, et al.,	)	(Filed
	)	March 6, 1987)
Defendants.	)	

DEFENDANTS' MOTION TO SET ASIDE DEFAULT AND FOR CONTINUANCE ON CONSTITUTIONAL GROUNDS

NOW COME ANN P. FIELDS, GERALD FIELDS, and LIFE FOR GOD'S STRAY ANIMALS, INC. (hereinafter referred to as Defendants) and hereby move this honorable Court to set aside the Order entered on February 16, 1987, and any subsequent Orders whereby the Court struck the defensive pleadings of these Defendants and held these Defendants to be in default, as a discovery sanction pursuant to Plaintiffs' Motion, on the following grounds:

1.

Defendants Gerald Fields and Ann P. Fields have not been shown to be in "willful" default, as required by law; no proper evidence of willfulness has been presented by Plaintiffs as a basis for the Motion and Order to strike the defensive pleadings of Defendants.

2.

In lieu of Defendants oral depositions, the Court has discretion to direct the discovery of information required by Plaintiffs to be made by alternative means of discovery, such as answers to interrrogatories, depositions upon written questions, and other available means of discovery.

3.

Defendants stand ready and willing to respond to such alternative means of discovery, as was previously suggested by Defendants on December 19, 1986 and January 6, 1987 (*See* Exhibit "A" to Court Order dated February 16, 1987).

4.

If the Court granted a reasonable continuance of the trial now scheduled to take place on March 9, 1987, for a period of thirty (30) days or less, Defendants could respond to any and all reasonable alternative discovery request.

5.

Plaintiffs' allegations of nuisance, set forth in their Complaint, if true, should rest, primarily, upon evidence independent of Defendants; the oral depositions of Defendants are insubstantial and unessential to the issues in the present case. Defendants are willing to stipulate factual issues such as ownership of the land in question and related issues (*See* Exhibit "A" attached to Court Order dated February 16, 1987).

6.

The purpose of all litigation is to seek the truth. Allowing Plaintiffs to prevail in this case by "default" would be a gross miscarriage of justice and would deprive Defendants of their rights to due process of law pursuant to the Georgia and United States Constitutions, and would, further, deprive Defendants of their rights to equal, impartial, and complete protection to their person and property pursuant to the Georgia and United States Constitutions.

7.

This Motion is based, further, upon Memorandum in Support hereof, filed on this date.

This 6th day of March, 1987.

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Respectfully submitted,

ABRAHAM A. SHARONY, P.C.

BY: /s/ _____
Attorney for Defendants

(Certificate of Service omitted in printing)

APPENDIX, PART III

IN THE SUPERIOR COURT OF ROCKDALE COUNTY

STATE OF GEORGIA

GAYLE ALLEN, et al.,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO.
	)	86-CV-1934
ANN P. FIELDS, et al.,	)	(Filed
	)	March 6, 1987)
Defendants.	)	

MOTION TO ALLOW DEFENDANTS TO CROSS-EXAMINE AND PRESENT EVIDENCE

NOW COME ANN P. FIELDS, GERALD FIELDS, and LIFE FOR GOD'S STRAY ANIMALS, INC. (hereinafter referred to as Defendants), and respectfully move the Court to allow them to cross-examine Plaintiffs' witnesses, and to present evidence in their own defense at the bench trial now scheduled to take place on March 9, 1987, as follows:

1.

Defendants are not in "willful" default, and the Court Order striking Defendants' pleadings should be set aside and reconsidered by this honorable Court.

2.

Even if Defendants were deemed to be in default, Plaintiffs' claims and Complaint would be analogous to a claim for unliquidated damages, whereby Defendants would be entitled to present evidence in their own defense at the trial, including the right to cross-examine Plaintiffs' witnesses, and to present their own evidence on the matters at issue.

3.

If permitted to cross-examine Plaintiffs' witnesses, and to adduce evidence on their own behalf, Defendants could, successfully, establish the following:

(a) That most, if not all of the Plaintiffs reside at distances of many miles away from the animal shelter located on Miller Bottom Road.

(b) That most, if not all Plaintiffs have not suffered any actual injury, but their concerns are merely speculative or contingent, by reason of Plaintiffs' concerns as to continued growth and expansion, in the future, of the animal population at the aforesaid animal shelter.

(c) That any injury suffered by most, if not all Plaintiffs has been only such as would affect a person of fastidious taste, and would not affect an ordinary reasonable person;

(d) If permitted to testify and adduce evidence in their own behalf, Defendants could establish that there

is no real hazard or injury affecting the Plaintiffs by reason of the animal shelter, insofar as noise, odor, health hazards, or any other related issues and claims asserted by Plaintiffs through the testimony of residents who live nearer to the animal shelter than do the Plaintiffs; that the noise generated by barking dogs has not and cannot affect the Plaintiffs' lives, safety, or welfare in any manner constituting a private or public nuisance under Georgia law;

(e) That the only time any substantial amount of noise is generated at the animal shelter (by barking), is when an ambulance siren stimulates barking, which occurs no more frequently than once a week and, even in those instances, the barking noise is not sufficient to reach the Plaintiffs' homes so as to constitute a private or public nuisance under the law.

4.

If Defendants are not permitted to cross-examine Plaintiffs' witnesses and are, further, not permitted to present evidence in their own defense, they will be deprived of due process of law, and equal protection of the law, pursuant to the Georgia and United States Constitutions.

5.

Defendant Gerald Fields has no ownership interest in the subject property on Miller Bottom Road, nor has he any control.

* * *

APPENDIX, PART IV

TRIAL PROCEEDINGS, MARCH 9, 1987

* * *

(p. 2) The Court: With reference to the matter, I think we find ourselves in this posture. There was an Order entered February 26th, which struck the pleadings of the defendant in this matter. At this time the Court's plan is to hear testimony from the plaintiff to substantiate their position if it can be substantiated, and this Court will hear that.

The Court does not intend to hear any testimony from the defendant, nor will the defendant have the right to participate so far as examination of witnesses or taking any active status. I will allow the defendant, Mr. Sharony, to make whatever notation you might want to as to rulings of the Court at this time on this procedure, but I want to get it clear before we begin. I will hear from you.

Mr. Sharony: If it please the Court, the comments made by the Court confirm the understanding we had since we were notified by the Court before the weekend. Your Honor, we did file on Friday three motions which I would like to inquire of the Court whether we could mention those three Motions. One was a Renewed Amended Motion to Recuse and Change of Venue and another to Set Aside the Default and Continuance and the other to allow the defendant to cross-examine and present evidence. To perfect the record I would like to (p. 3) the motions were filed and I could briefly address the Court as to each motion, if the Court would allow.

The Court: These motions are a continuation of your pleadings, are they not? The pleadings you filed in the answer to the main suit, didn't you cover all those things in your pleadings?

Mr. Sharony: Not completely. The original motion we filed to change venue was not technically styled as Motion to Recuse but styled as a Motion to Change Venue and did not have an affidavit attached.

In view of the Court's ruling on February 26th we felt that to perfect the record we should amend that and add an affidavit to it, but the contents and substance of the affidavit and renewed motion is substantially the same as the previous Motion to Change Venue, and I am in agreement that the substance of the renewed motion is not different. Just the style and attachment of the affidavit.

The Court: I covered the change of venue in the previous order.

Mr. Sharony: Yes.

The Court: I think I covered the recusal in this Order.

Mr. Sharony: As dicta you did.

The Court: In looking at those motions, I (p. 4) don't believe I had time to rule on them yet, but did not strike the Court as raising such new issues that it required immediate examination of it. I am—I think you can rely that the Court will deny your motion on the three. I have just not been able to do it in a formal order.

Mr. Sharony: May I perfect the record?

The Court: Yes.

Mr. Sharony: It's—I appreciate the Court's permission to address the record. It's my understanding that the defendant's pleadings have been stricken by reason of nonappearance on oral deposition. In connection with that, it's my understanding the Court has granted the plaintiff's Motion for Protective Order.

The Court: I have not signed it, but it will be granted. I have granted it but not gotten the formal Order out.

Mr. Sharony: It's also my understanding that because of the defendant's pleadings being stricken that the defendant will not be permitted to participate in this trial by cross-examination of witnesses or by presenting testimony and witnesses in their own defense in connection with the allegations in the complaint.

In connection with that, Your Honor, we suggested in our motion—this is the recent motion (p. 5) that we filed, directed for the Court's discretion is our suggestion that discovery could be had by other means by the plaintiffs in connection with the discovery sought by plaintiff, such as by deposition questions, that is interrogatories or deposition by telephone, but those alternative means, Your Honor, if the Court considered those would necessarily require a continuance of the trial, and we asked the Court for a limited continuance of 30 days or less if the Court felt that it would be appropriate to allow these alternative means of discovery that could be complied with.

In connection with that, we felt that the defendant's deposition really should not be essential by any means for the plaintiffs to establish allegations for nuisance, whether or not there was a nuisance to plaintiff would depend on the impact that the animal shelter has on the plaintiffs as

their testimony and subject, of course, to any defense, but we reiterate this claim that the defendant's deposition, although we feel would be insignificant, we would be prepared to furnish information by other means other than oral deposition in person. And we feel, Your Honor, that this matter did address itself to your discretion insofar as conduct and discovery.

The Court: Let me say this. This Court is (p. 6) not going to take any alternative measures to protect the position of the Fieldses who are fugitives of the Court and for this Court to do this to protect their interest is beyond the stretch of imagination.

I am not trying to tell the plaintiffs how to handle the case. They have the right to depositions and discovery and this Court will not dictate how they do it. I overrule any motions you might have to that, and I think I made it abundantly clear in Orders I have previously issued. To say they have other methods of discovery, they may have, but they have their choice and the Court has not found it unreasonable and I would not entertain any motion or discussion pertaining to alternatives or continuance of this hearing for the purpose of trying to work out any alternative method.

Go ahead. I just wanted to get that in to start with.

Mr. Sharony: I do believe it's within the Court's discretion, and as a last point on this issue, we feel the whole issue is based upon the defendant Fieldses not appearing in person by reason of circumstances well-known to the Court and well-known to the plaintiffs and their counsel and we feel if the defendant Fieldses were in the status of being fugitives, as has been referred to, that that and I

(p. 7) submit this for your consideration, just because a person is a fugitive to one matter or one situation does not make property rights alleging civil rights of that person free game insofar as any other matters.

For instance, if a person were a fugitive and had a car financed by the finance company and the loan was in default, the finance company still have to comply with the law and due process in the manner it sought to repossess that car or any property of the fugitive.

I submit for the Court's consideration just because a fugitive in another matter does not mean constitutional rights and right to due process can be disregarded by other parties in another case, and that's basically our constitutional argument we raised in the recent motion.

The third motion is to allow us to cross examine and present evidence and we make an offer of proof and I would like to inquire if the Court would allow us to make an offer of proof at this time on the record as to what the evidence would show by way of defense and cross-examination and independent testimony if the defendant were permitted to do so. We outlined in our motion generally what our evidence would show.

I would like to state, Your Honor, if (p. 8) permitted to cross examine the plaintiff's witnesses and introduce evidence on behalf certain facts and circumstances would be tendered into evidence. If I could I would like to outline what those circumstances would be.

The Court: No, sir, the Court will not permit you to outline what you expect to show had you been allowed to present your case. The Court has striken the pleadings

and the position of the defendant in this case so far as the Court is concerned would be that of an observer of what takes place, but to allow you to state what you intend to show would be almost going around the Order that the Court has signed because the Court—if you have no pleadings before the Court the Court is not concerned with taking up the Court's time with what you would have done had you been in Court and had the answer been filed. The Court will not allow that.

I am here to hear from the plaintiffs in the matter as to whether or not they have a case for relief they are seeking. I will let you complete the record as to objections to procedure but not going to what procedure might be.

Mr. Sharony: Thank you. As I understand the Court's ruling, the defendant's pleadings having been (p. 9) stricken, the defendants are merely observers or spectators and have no right to make an offer of proof as a party would as a participate—

The Court: That's correct. I know there are cases on defaults and that with unliquidated damages and no answer filed or any type civil action ordinarily I've got the right—the Court takes the position this is an entirely different situation. To allow you to do that would be the same—would be no reason to have struck your pleadings if the Court is going to allow you to participate in the case from the standpoint of discussing whether or not the plaintiff made out a case, because you would do nothing more than that if you were a defendant before the Court and your pleadings were in life. The Court will not accept that.

Mr. Sharony: I would like to take the opportunity to do what the Courrt suggested on the objection.

The Court: You may do that.

Mr. Sharony: To the defendant not being allowed to participate and cross examine witnesses as these rulings being in violation of the defendant's right to trial by jury as has been referenced in the previous motion and also being a violation under the Georgia Constitution Article One, Paragraph One and (p. 10) United States Constitution Amendments V and XVI as to Defendants right to due process of the law, and furthermore to the defendant's right to equal and impartial and complete protection to their person and property see Georgia Constitution Article I, Section I, Paragraph II, and United States Constitution Amendment XVI. Thank you.

The Court: All right, Mr. Henderson.

Mr. Henderson: By way of protecting the record in—I would like to address one point.

The Court: You may address what you want.

Mr. Henderson: I am particularly protective of Mr. Sharony's motion wherein he was averring that you went beyond discretion in striking the pleadings and stated three cases that stood—the first one was Lassiter, Cook vs. Lassiter that said you can't strike the pleadings unless you find willfulness on the part of the defendant in not showing up and he averred that apparently that was not so.

I want to point out for the record that the hearing was held on February 11th where this precise exact issue was taken up and His Honor, the Fieldses having not showed up on behalf of it's individually or corporation at

the January 6th deposition was given additional opportunity on February 26th to appear so as

* * *

APPENDIX, PART V

IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA

GAYLE ALLEN, et al.,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO.
	)	86-CV-1934
ANNE P. FIELDS, et al.,	)	(Filed
	)	March 9, 1987)
Defendants.	)	

ORDER

The Plaintiffs' Motion for Protective Order having been filed on February 24, 1987, and after consideration thereof the court finds as follows:

* * *

On said date, the Defendants did not appear for their depositions and an Order subsequently issued of this court striking their defensive pleadings. The Defendants still maintain their fugitive status.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court makes the following conclusion of law:

The Scheduling Order entered by this court on December 2, 1986, was entered to govern the parties pre-trial preparations. The requirement that all motions be filed on or before January 30, 1987, necessarily meant that the

discovery period in this case would end on that date. Therefore, the Defendants' Notice of Oral Deposition is untimely, and accordingly, the Notice of Oral Depositions could not be enforced even if same were otherwise valid.

The court finds that the Defendants' total failure to respond to the Plaintiffs' lawful discovery and their failure to institute discovery prior to the time for filing Motions or to even move for an extension of discovery at the time of the hearing on February 11, 1987, is in an abuse of the discovery process under the Civil Practice Act which entitles the Plaintiff to protective relief from the court.

The court further finds that the Defendants' Notice of Oral Deposition is defective under O.C.G.A. Section 9-11-30 since same does not specify the time for each of the Plaintiffs'

* * *

APPENDIX, PART VI

IN THE SUPERIOR COURT OF ROCKDALE COUNTY STATE OF GEORGIA

GAYLE ALLEN, et al.,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO.
	)	86-CV-1934
ANNE P. FIELDS, et al.,	)	(Filed
	)	March 11, 1987)
Defendants.	)	

ORDER

The above styled case having come before the Court on March 9, 1987, the day originally scheduled for trial of this case, but now on the issue of judgment by default, and after hearing testimony and evidence from the Plaintiffs and argument of counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACTS

On August 15, 1986, the Plaintiffs filed their Complaint for Abatement of Nuisance. Defendants answered the Plaintiffs' Complaint on or about November 6, 1986. Defendants' Answer admitted jurisdiction, venue and proper service of process. Therein, the Defendants further admitted that Anne P. Fields, Gerald Fields and Life for God's Stray Animals, Inc. own, operate and manage an animal refuge on property located on or near Miller Bottom Road in Rockdale County, Georgia.

On February 16, 1987, after previously having heard argument from counsel for both parties and having given the Defendants an opportunity to explain their failure to appear as required by law, the Court entered an Order finding that the Defendants willfully failed to appear for their depositions as properly scheduled and noticed by the Plaintiffs for January 6, 1987. It was further ordered that the Defendants' Answer would be stricken pursuant to O.C.G.A. Section 9-11-37(d) if the Defendants failed to appear for their depositions on or before 9:00 o'clock a.m., February 26, 1987, at the Rockdale County Courthouse. The Defendants did not appear at the designated time or place either individually or through counsel, and on February 26, 1987, the Court entered an Order striking all pleadings filed on behalf of the Defendants Anne P. Fields, Gerald Fields and Life for God's Stray Animals, Inc.

The Court further finds that the Defendants Anne P. Fields and Gerald Fields are fugitives from this State and all appearances in this case have been through legal counsel. There is no issue of damages in this case.

The Court further finds that Defendants Anne P. Fields, Gerald Fields and Life for God's Stray Animals, Inc. own, operate and manage an animal refuge on property located on or near Miller Bottom Road in Rockdale County, Georgia. At the present time, said Defendants are keeping approximately five hundred (500) cats and dogs on said property. The number of animals on the property causes loud noises to emanate therefrom. There is continuous barking and yelping at all hours of the day and night originating from the Defendants' property. Noxious odors also emanate from the property. There has been a substantial increase in the numbers of stray

dogs roaming about the Plaintiffs' neighborhood since the inception of the animal shelter. These dogs have tended to band together in packs. The Court finds that these stray dogs constitute a threat to the persons and property of the Plaintiffs.

All Plaintiffs reside within approximately a three mile radius of the Defendants' property. Of the six Plaintiffs who testified at the final hearing, all lived within a one and one-half (1½) mile radius of the shelter. The Court also finds that the Plaintiffs have suffered special injury as a result of the Defendants' maintenance of the animal shelter. The Court finds that some Plaintiffs have necessarily kept their windows closed in the summertime in an attempt to lessen the annoyance caused by the noise and odor emanating from the Defendants' property. Most Plaintiffs have had to limit their outside activities because of the noise created by animals kept at the shelter. Other Plaintiffs have lost considerable amounts of sleep due to the loud barking, yelping and other noises coming from the property. Some Plaintiffs have been attacked by the stray dogs now present in the area. Others have lost livestock to the strays. The Court finds that the increase in strays is directly related to the Defendants' maintenance of the animal shelter on said property. The Court finds that the real property of at least one Plaintiff has become less marketable as a result of the presence of the animal shelter. The Court finds that the Defendants intend to move more animals to the subject property which would increase the noise level, odor and presence of stray dogs above that which now exists. The Court finds that no alternate remedy is available short of closing the shelter.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact the Court makes the following conclusions of law:

1.

This Court has jurisdiction of the parties and of the subject matter of this litigation.

2.

Venue is proper in this case.

3.

The issue before the Court on this default hearing is whether under the facts presented through live testimony of the Plaintiffs and taking the allegations of the Plaintiffs' Complaint as admitted entitle Plaintiffs to the relief sought.

4.

The noise, odor and attraction of stray dogs created by the animal shelter located on Defendants' property on Miller Bottom Road in Rockdale County, Georgia interferes with the quiet enjoyment of the Plaintiffs' property.

5.

The injuries suffered by the Plaintiffs is such as would affect an ordinary reasonable person and not only those of fastidious taste.

6.

The Defendants' interference with the Plaintiffs' rights to the peaceful and quiet enjoyment of their real

property constitutes a nuisance, both public and private, under Title 41 of the Official Code of Georgia Annotated.

7.

The appropriate remedy for the abatement of the aforesaid nuisance is the closing of said shelter.

WHEREFORE, IT IS HEREBY ORDERED as follows:

1. that judgment be entered for the Plaintiffs and against the Defendants, Anne P. Fields, Gerald Fields and Life for God's Stray Animals, Inc.;

2. that the maintenance of the animal shelter on Defendants' property located on or near Miller Bottom Road in Rockdale County, Georgia be and hereby is declared a nuisance;

3. Defendants are Ordered to abate said nuisance and to close and to cease to operate said animal shelter thereon; and

4. Defendants are to remove all animals from the property within thirty days (30) from the date of this Order.

SO ORDERED this 11th day of March, 1987.

/s/ Clarence R. Vaughn, Jr.
Clarence R. Vaughn, Jr., Judge
Rockdale Superior Court
Rockdale Judicial Circuit

APPENDIX, PART VII

In the Supreme Court of Georgia

Decided: Sept. 9, 1987

447.17. FIELDS, et al. v. ALLEN, et al.

PER CURIAM.

Judgment affirmed without opinion pursuant to Rule 59. All the Justices concur.

APPENDIX, PART VIII

(duplicate)

Clerk's Office, Supreme Court of Georgia

DEAR SIR: ATLANTA 9/24/87

The motion for a rehearing was denied today:
Case No. 44717, Fields et al. v. Allen et al.

Yours very truly,

/s/ Mrs. Joline B. Williams, Clerk
MRS. JOLINE B. WILLIAMS, Clerk

APPENDIX, PART IX

GA. CONST. Art. 1, § 1, ¶ 1

Paragraph I. Life, liberty, and property

No person shall be deprived of life, liberty, or property except by due process of law.

APPENDIX, PART X

GA. CONST. Art. § 1, ¶ 2

Paragraph II. Protection to person and property; equal protection.

Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

APPENDIX, PART XI

GA. CONST. Art. 1, § 1, ¶ 12

Paragraph XII. Right to the courts.

No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state.

APPENDIX, PART XII

256 Ga. 338

LIFE FOR GOD'S STRAY ANIMALS, INC. et al.

v.

NEW NORTH ROCKDALE COUNTY HOMEOWNERS ASSOCIATION et al. (Two Cases).

Nos. 43739, 43815.

Supreme Court of Georgia.

Oct. 22, 1986.

Contemnors appealed from order of the Superior Court, Rockdale County, Clarence R. Vaughn, J., finding them in contempt. The Supreme Court, Bell, J., held that: (1) flight of two of the contemnors divested them of right to appeal; but (2) court had found remaining contemnor guilty of criminal contempt; and (3) it was improper to make that finding without applying the beyond-reasonable-doubt standard.

Dismissed in part and vacated and remanded in part.

Hunt, J., concurred in the judgment only.

Gregory, J., dissented.

Michael Kennedy McIntyre, Abraham A. Sharony, Abraham A. Sharony, P.C., Atlanta, for Life For God's Stray Animal's, Inc., et al.

John A. Nix, Maddox, Starnes & Nix, Conyers A. Lee Parks, Meals, Kirwin, Goger, Winter & Parks, P.C., Atlanta, for New North Rockdale Homeowners Ass'n, et al.

BELL, Justice.

These appeals are the latest in a series of seven appeals[1] arising from a controversy in which neighboring landowners of an animal shelter are attempting to force the removal of the shelter from their environs. Ann P. and Gerald Fields, appellants in Appeal No. 43815, operate the shelter, and Ronald Lee Denney, appellant in Appeal No. 43739, is the foreman of the shelter. The Fields and Mr. Denney seek review of judgments holding them in contempt. For the following reasons we dismiss Appeal No. 43815, and vacate and remand Appeal No. 43739.

Appeal No. 43815. Ann P. and Gerry Fields

1. The Fields were held in civil contempt and ordered jailed until they purged themselves of their contempt, and thereafter failed to report to jail as ordered, and cannot presently be located. We hold that their flight constitutes an open defiance of the authority of the courts of this state, and operates to divest them of the right to appeal the judgment of the superior court. See generally *Yates v. Brown*, 235 Ga. 391(1), 219 S.E.2d 729 (1975), and special concurrence of Hill, J.

Appeal No. 43739. Ronald Lee Denney

2. The superior court held Mr. Denney in contempt and ordered him to report to the Rockdale County Jail to serve ten days imprisonment. By imposing this uncondi-

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1. The first two appeals were determined by this court in a published opinion, *Life for God's Stray Animals, Inc. et al. v. New North Rockdale County Homeowners Assoc., et al.*, 253 Ga. 551, 322 S.E.2d 239 (1984). The subsequent appeals prior to the present appeals were affirmed by this court without opinion pursuant to Rule 59.

tional imprisonment for a specified period, the court found appellant guilty of criminal contempt. *Ensley v. Ensley,* 239 Ga. 860, 238 S.E.2d 920 (1977). "*In re Crane,* 253 Ga. 667, 670 (324 SE2d 443) (1985) this courth eld "that the standard of proof in criminal-contempt cases is the beyond-reasonable-doubt standard.' " *In re Irvin,* 254 Ga. 251, 255(2), 328 S.E.2d 215 (1985). Our examination of the record in this case does not reveal any ruling or finding in which the trial judge applied the beyond-reasonable-doubt standard. We therefore vacate the judgment and remand the case to the trial court for application of that standard. See *In re Irvin,* 254 Ga. at 256-57, 328 S.E.2d 215.

Appeal No. 43815 is dismissed.

All the Justices concur, except WELTNER, J., disqualified, and HUNT, J., who concurs in the judgment only.

In Appeal No. 43739, the judgment of the trial court is vacated and remanded to the trial court for further disposition not inconsistent with the opinion.

All the Justices concur, except WELTNER, J., disqualified; HUNT, J., who concurs in the judgment only; and GREGORY, J., who dissents.

APPENDIX, PART XIII

IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA

GAYLE ALLEN, et al.,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO.
	)	86-CV-1934
ANNE P. FIELDS, et al.,	)	
Defendants.	)	

NOTICE TO TAKE DEPOSITION

TO: Anne P. Fields
3771 Miller Bottom Road
Loganville, Georgia 30249

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 26 and 30 of the Georgia Civil Practice Act, Counsel for the Plaintiffs will proceed to take the deposition of Anne P. Fields, at 10:00 o'clock, a.m., on January 6, 1987, at the offices of Moffett and Henderson, P.C., 1916 Piedmont Road, N.E. Atlanta, Georgia, 30324, (or at such other place and time as is mutually agreed upon by counsel), upon oral examination and discovery, and continuing from day to day thereafter until completed. The deposition will be taken before an officer duly authorized by law to administer oaths and to take depositions for use in accordance with law.

RESPECTFULLY SUBMITTED, this 5 day of December, 1986.

MOFFETT AND HENDERSON, P.C.
Attorneys for Plaintiffs

/s/ John Walton Henderson, Jr.

/s/ H. Brian Sams

1916 Piedmont Road, N.E.
Atlanta, Georgia 30324-4187
(404) 658-9950

(Certificate of Service omitted in printing)

APPENDIX, PART XIV

IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA

GAYLE ALLEN, et al.,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO.
	)	86-CV-1934
ANNE P. FIELDS, et al.,	)	
Defendants.	)	

NOTICE TO TAKE DEPOSITION

TO: Gerald Fields
3771 Miller Bottom Road
Loganville, Georgia 30249

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 26 and 30 of the Georgia Civil Practice Act, Counsel for the Plaintiffs will proceed to take the deposition of Gerald Fields, at 11:00 o'clock, a.m., on January 6, 1987, at the offices of Moffett and Henderson, P.C., 1916 Piedmont Road, N.E. Atlanta, Georgia, 30324, (or at such other place and time as is mutually agreed upon by counsel), upon oral examination and discovery, and continuing from day to day thereafter until completed. The deposition will be taken before an officer duly authorized by law to administer oaths and to take depositions for use in accordance with law.

RESPECTFULLY SUBMITTED, this 5th day of December, 1986.

MOFFETT AND HENDERSON, P.C.
Attorneys for Plaintiffs

/s/ John Walton Henderson, Jr.

/s/ H. Brian Sams

1916 Piedmont Road, N.E.
Atlanta, Georgia 30324-4187
(404)658-9950